



DEPARTMENT OF COMMERCE

International Trade Administration

C-533-902

Organic Soybean Meal from India: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of organic soybean meal from India.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5484.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2021, Commerce published the *Preliminary Determination* in the *Federal Register*.¹ In the *Preliminary Determination*, and in accordance with section 705(a)(1) of the Tariff Act of 1930 as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final determination of this CVD investigation with the final determination in the companion antidumping duty investigation of organic soybean meal from India. On December 8, 2021, Commerce released its Post-Preliminary Analysis.² For a complete description of the events that followed the *Preliminary Determination* and Post-Preliminary Analysis, *see* the Issues and

¹ See *Organic Soybean Meal from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 86 FR 49514 (September 3, 2021) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Post-Preliminary Analysis Memorandum,” dated December 8, 2021.

Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is organic soybean meal from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, Commerce did not receive scope comments from any interested parties. Thus, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination*. *See* Appendix I for the final scope of the investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient,

³ *See* Memorandum, "Issues and Decisions Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Organic Soybean Meal from India," dated concurrently with, and hereby adopted by, this notice (Issues and Decisions Memorandum).

and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on the facts otherwise available on the record pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because the Government of India and various producers or exporters of subject merchandise did not act to the best of their abilities in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, *see* the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁵

Changes Since the *Preliminary Determination*

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy rate calculations for Bergwerff Organic India Private Limited (Bergwerff), All Others rate and the calculation of AFA rates. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In this investigation, the only individually calculated rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Bergwerff. Consequently,

⁴ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁵ *See* Commerce’s Letter, “Countervailing Duty Investigation of Organic Soybean Meal from India: In Lieu of On-Site Verification Questionnaire,” dated December 15, 2021; *see also* Bergwerff’s Letter, “Organic Soybean Meal from India: In Lieu of Onsite Verification Questionnaire Response,” dated December 22, 2021.

the rate calculated for Bergwerff is also assigned as the rate for all other producers and exporters not individually examined in this investigation.

Final Determination

Commerce determines the total estimated net countervailable subsidy rates to be:

Company	Subsidy Rate (percent)
Bergwerff Organic India Private Limited ⁶	9.57
Shanti Worldwide	283.91
Shri Sumati Oil Industries Pvt. Ltd.	283.91
Navjyot International Pvt. Ltd.	283.91
Ish Agritech Pvt. Ltd. ⁷	283.91
Satguru Organics Pvt. Ltd. ⁸	283.91
Radiance Overseas ⁹	283.91
Swastik Enterprises ¹⁰	283.91
Soni Soya Products Limited ¹¹	283.91
Raj Foods International ¹²	283.91
Vantage Organic Foods Pvt. Ltd. ¹³	283.91
Shree Bhagwati Oil Mill ¹⁴	283.91
Pragati Organics ¹⁵	283.91
All Others	9.57

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of its public announcement, or if there is no public

⁶ As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Bergwerff: Suminter India Organics Private Limited.

⁷ See Preliminary Decision Memorandum at section VII, “Use of Facts Otherwise Available and Adverse Inferences.”

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after September 3, 2021, the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, effective January 1, 2022, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries from September 3, 2021, through December 31, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of organic soybean meal from India. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it

will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: March 17, 2022

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

Appendix I

Scope of the Investigation

The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. “Certified organic soybean meal” is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent standards under an existing organic equivalency or recognition agreement.

Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.

Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1020, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum:

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Use of Facts Otherwise Available and Adverse Inferences: Non-Cooperative and Non-Responsive Companies
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Analysis of Comments
 - Comment 1: Whether Bergwerff Failed to Identify an Affiliated Supplier
 - Comment 2: Whether Commerce Should Apply Adverse Facts Available (AFA) to Bergwerff for Failing to Report Use of an Export Promotion Scheme
 - Comment 3: Whether Commerce Should Countervail the Duty Drawback Benefits Received by Bergwerff for Organic Soybeans
 - Comment 4: Whether Commerce Should Have Selected Additional Respondents for Individual Examination in this Investigation
 - Comment 5: Whether Commerce Should Apply Total AFA to Shanti Overseas (India) Ltd.
 - Comment 6: Whether Commerce Should Recalculate the Benefits Received Under the Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material, and Exemption from Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
 - Comment 7: Whether Commerce Should Countervail the Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials
 - Comment 8: Whether Commerce Should Recalculate the Benefits Received Under the Merchandise Export Incentive Scheme (MEIS) Program
 - Comment 9: Whether Commerce Should Countervail the Pre-Shipment and Post-Shipment Export Financing Program
 - Comment 10: Whether Commerce Assigned the AFA Rate Twice for the SGMP Exemption from Electricity Duty and Cess on Electricity Supplied to a Special Economic Zone (SEZ) Unit Program
 - Comment 11: Whether Commerce Should Countervail the Advance Authorization Program (AAP) and the Duty Drawback (DDB) Program
 - Comment 12: Whether Commerce Should Apply AFA to the Non-Cooperative Mandatory Respondents that Withdrew from Participation in the Investigation
 - Comment 13: Whether Commerce Should Apply AFA to the Government of India (GOI)
 - Comment 14: Whether Commerce Correctly Initiated the Transportation and Marketing Assistance (TMA) for Special Agriculture Products
- VIII. Recommendation